

# **TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

## **MINUTES OF BOARD MEETING**

**DECEMBER 13, 2005**

President Bob Arrington called the meeting to order at 10:02 a.m. in Conference Room 160, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Bob Arrington, President, Danny Cook, Vice President, Bob Foster, Wendy Hellum, Ralph Buckner, Jr. and Stephen Murphy. Absent was board member Nancy Vincent.

Staff members present were Robert Gribble, Executive Director, Wayne Pugh, Legal Counsel, Lauren Kitchell, Attorney, Bill Luna, Jimmy Kesey and Roy Bozeman, Field Representatives, Sandra Cooper and Jimmy Gossett Administrative Assistants.

### **APPROVAL OF MINUTES:**

A motion was made by Mr. Cook to approve the minutes of the November 8, 2005 Board meeting.

Seconded by Mr. Buckner

Adopted by voice vote

### **APPROVAL OF FUNERAL DIRECTOR AND/OR EMBALMER LICENSES:**

Upon motion, based upon the application records, the following applicants were approved for licensure.

**Brenda Kaye Austin  
Goodlettsville, TN**

**Funeral Director**

**James Michael Cox  
Clinton, TN**

**Funeral Director**

**David Floyd Ensminger  
Johnson City, TN**

**Funeral Director**

**Randy Lynn Fergie  
Memphis, TN**

**Funeral Director**

**Aaron Thaddeus Gunn, III  
Cordova, TN**

**Funeral Director/Embalmer  
Reciprocity**

**Wendy Lorraine Ammar  
Memphis, TN**

**Funeral Director/Embalmer**

**John Randall Hobbs  
Kingsport, TN**

**Funeral Director/ Embalmer**

**Thomas Chadwick Martin  
Spring Hill, TN**

**Funeral Director/Embalmer**

**APPROVAL OF ESTABLISHMENT LICENSES:** Upon motion, based upon the application records, the following applicants were approved for licensure.

**Al Tacker's Casket Store and  
Cremation Services  
Memphis, TN**

**Name Change  
Ownership: Corporation**

**Harrison's Funeral Home -  
Orange Mound Chapel  
Memphis, TN**

**Name Change  
Ownership: Corporation**

**Costner-Maloy Funeral Home  
Newport, TN**

**Change of Ownership/Name Change  
Ownership: LLC**

**Oak Lawn Funeral Home –  
Cremation Center  
Sparta, TN**

**New Establishment  
Ownership: Partnership**

**Peebles Funeral Home West Chapel  
Oakland, TN**

**New Establishment  
Ownership: Corporation**

**LEGAL REPORT:  
WAYNE PUGH, STAFF ATTORNEY**

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**1. Case No.: L05-FUN-RBS-2005034531**

Anonymous complainant sent in newspaper ad claiming false advertising. Claims are that the FH is not "locally owned and operated" and there is no such thing as "burial insurance" because the term was outlawed in 1955 citing to TCA §56-34-105 through 108.

FH responds that this is probably an attempt by a competitor to cause trouble. FH denies any of the allegations in the anonymous complaint. FH sends copy of the phonebook with other FH's advertising about burial policies.

**Recommendation: Dismiss**

A motion was made by Mr. Murphy to accept counsel's recommendation.

Seconded by Ms. Helling

Adopted by voice vote

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**2. Case No.: L05-FUN-RBS-2005036141**

Complainant alleges FH personnel were rude and insulting to her after the death of her husband while she was trying to make arrangements from the hospital. No clear evidence was given.

FH response denies allegations.

**Recommendation: Dismiss**

A motion was made by Ms. Hellum to accept counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

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**3. Case No.: L05-FUN-RBS-2005036111**

Complainant alleges that they purchased and paid for cremations and cremation plots and now charges are being "added-on". There was confusion about what type of cremation marker was included in the contract, date of death vs. date specific. Complainants bought the packages in 1992, and in 2005 they found an ad telling them to contact the Cemetery Company about their paid up package. Complainants say they were told that they needed to pay an extra \$400 for the opening and closing of each cremation plot, and if they did not pay now the price would go up.

The problem seems to be that the Cemetery not the FH wants to charge an "opening and closing" fee when it is not necessary. FH states that they do not think an opening/closing fee is necessary because the type of vault does not require this. FH offered to pay for the full date death scroll as a gesture of good will, which the complainants accepted.

**Recommendation: Dismiss**

A motion was made by Mr. Murphy to accept Counsel's recommendation

Seconded by Mr. Cook

Adopted by voice vote

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**4. Case No.: L05-FUN-RBS-2005035911**

Complainant alleges that they were deceived into buying insurance policies instead of crematory policies which they wanted. They purchased two at a cost of \$2,370.00. Complainants bought policies believing them to be Dignity Memorial policies but in actuality they are American Memorial policies. The folder the policies came in had the Dignity Memorial logo on it. They were told that they were transferable to any where in the U.S. and that the prices were locked in. The complainants have moved from TN to WA and want to be sure

their policies will be honored. Complainants are now satisfied with how the respondent FH handled the situation.

FH responded that they have contacted the Area Director in the Portland/Vancouver WA area who will take care of the pre-need complainants bought at the TN FH. Email from WA Area Director confirms that he is in contact with the complainants. WA Area Director states in email that they assured complainant they would honor the policy.

**Recommendation: Letter of Warning**

A motion was made by Mr. Murphy to Dismiss

Seconded by Mr. Buckner

Adopted by voice vote

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**5. Case No.: L05-FUN-RBS-2005030531**

Complainant alleges that it took two years to get vase and monument inscribed. The date of death was July 13, 2003 and the inscription was not done until October 1, 2005. Complainant was told that the vase would be installed and inscribed at the time of death with no additional charge. Complainant after trying to get the vase inscribed for two years paid for the installation themselves. They feel that they need to be reimbursed for this. Complainant also alleges that they were charged for services that were included in the pre-need contract. Charges include: \$150 limo service that was not used; \$150 opening gravesite which was included in the prearranged contract; \$175 for hair and makeup of deceased which was done by a family friend.

After the second request FH responds that they are sorry for the inconvenience and they have offered the complainant \$500 to offset the mistake. FH responds that the delay for the inscription was due to the slow receipt from the rock quarry in Georgia. FH also responds that no charges were added-on. The response for the limo charge was that it was part of the prearranged package and even though they did not use it, it was their choice. For the opening charge the FH asserts that the actual cost was \$300 which was discounted due to the contract. FH also states that the deceased did have her hair and makeup done by the FH.

**Recommendation: Consent Order assessing \$1,000 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Buckner to accept Counsel's recommendation

Seconded by Mr. Murphy

Adopted by voice vote

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**6. Case No.: L05-FUN-RBS-2005032641**

Complaint is the result of an inspector's notice of violation which alleges: improper range on immediate burial price list, improper range on direct cremation price list, wrong effective date casket price list.

No response from FH.

**Recommendation: Consent Order assessing \$1,000 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Murphy to accept Counsel's recommendation

Seconded by Mr. Buckner

Adopted by voice vote

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**7. Case No.: L05-FUN-RBS-2005031331**

Complainant alleges she is receiving harassing mail and phone calls from FH for past due charges she says she does not owe and is not responsible for. Complainant is the wife of the deceased's nephew and she has never signed a contract with the FH making her a party to the matter. The deceased signed a pre-need contract in 1994.

FH response denies this. They claim that the complainant along with her husband and the deceased's sister came to the FH to arrange the deceased funeral. FH claims that they added on things which were not included in the Pre-need contract which they signed for. The contract they provided says "signature on file." FH claims they have stopped sending the complainant bills and have written the extra charges off as uncollectible.

**Recommendation: Consent order assessing a \$500 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Buckner to accept Counsel's recommendation

Seconded by Mr. Cook

Adopted by voice vote

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**8. Case No.: L05-FUN-RBS-2005031361**

Complaint is the result of an inspector's notice of violation which alleges: establishment license is expired; owner/manager listed lives out of state and does not conduct funerals or help with funerals; 12 violations on GPL (general price list) and OBCPL (outer burial container price list); inspector was unable to inspect the goods and services forms.

FH responded that all violations have been corrected. States that the owner/manager comes to TN every two weeks and whenever a funeral needs to be arranged. Also states that another mortuary does the embalming for them. FH establishment license has been renewed.

**Recommendation: Consent Order assessing \$1,000 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Cook to accept Counsel's recommendation

Seconded by Mr. Murphy

Adopted by voice vote

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**9. Case No.: L05-FUN-RBS-2005036821**

Complaint is the result of an inspector's notice of violation which alleges: multiple violations of FTC rules. The price lists lacked strict specific disclosures including but not limited to: CPL didn't have the name of the establishment on it. Inspector also noted that the cremation form did not have required statutory words included in it.

FH response is that all errors have been corrected. They sent in a copy of all of the new price lists and cremation forms.

**Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Buckner to accept Counsel's recommendation

Seconded by Mr. Foster

Adopted by voice vote

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**10. Case No.: L05-FUN-RBS-2005039481**

Complainant FH looking for insurance benefits from Respondent FH after providing services and merchandise for deceased upon request of deceased's wife. Complainant FH paid Respondent FH for embalming when they picked up the body. Complainant FH requests that Respondent FH give them rights to the \$5000 insurance policy because they conducted the funeral.

The two FH's have worked out the problem and Complainant FH withdrew their complaint.

**Recommendation: Dismiss**

A motion was made by Mr. Foster to accept Counsel's recommendation

Seconded by Mr. Buckner

Adopted by voice vote

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**11. Case No.: L05-FUN-RBS-2005039461**

Complaint is the result of an inspector's notice of violation which alleges: permanent I.D. tag only had the name of deceased and did not have the D.O.B, D.O.D., or the S.S.#.

FH says this has been corrected.

**Recommendation: Consent Order assessing \$250 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Buckner to accept Counsel's recommendation

Seconded by Mr. Murphy

Adopted by voice vote

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**12. Case No.: L05-FUN-RBS-2005039321**

Complaint is the result of an inspector's notice of violation which alleges: current establishment license was not present at time of inspection; GPL casket prices ranged from \$895 to \$6,395 did not match what was listed in the (CPL) Casket Price list; casket in selection room was not listed on the GPL.

FH sent corrected CPL and GPL as response and states that establishment license was ordered and now hangs in the FH

**Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Foster to accept Counsel's recommendation

Seconded by Mr. Buckner

Adopted by voice vote

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**13. Case No.: L05-FUN-RBS-2005040051**

Complaint is the result of an inspector's notice of violation which alleges: several FTC violations: improper ranges on the GPL and CPL.

**Recommendation: Consent Order assessing \$500 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Cook to accept Counsel's recommendation

Seconded by Mr. Murphy

Adopted by voice vote

**14. Case No.: L05-FUN-RBS-2005039421**

Complaint is the result of an inspector's notice of violation which alleges:

1. The charter for the corporation is invalid.
2. The preparation room was *extremely unsanitary*. There was dried blood on one of the tables and all over the floor from a previous embalming procedure several days previously. Dried blood on cotton swabs lying on the counter. A male body that had been autopsied was on one of the tables, completely uncovered with blood and other fluids running down the embalming table and onto the floor. Empty embalming fluid bottles were lying on the floor, and soiled linens were on tables and counters. A casket panel insert was lying on the embalming table. (Inspector took pictures to document the evidence).
3. No permanent ID tags were available. Inspector was told they had run out and had not ordered any new ones to date.
4. Numerous violations on the GPL.
5. No casket price list was available. Inspector was told they take the families to a warehouse and show them caskets there.
6. No outer burial price list was available. Was told that the vault company was supposed to send them one.

After 2<sup>nd</sup> request, FH manager responded that he had no control over the FH but that he had told the owners of the citation and they were in the process of taking all necessary steps to correct the violations listed.

**Recommendation: Consent Order assessing \$3,000 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Murphy to accept Counsel's recommendation

Seconded by Mr. Buckner

Adopted by voice vote

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**15. Case No.: L05-FUN-RBS-2005039471**

Complaint is the result of an inspector's notice of violation which alleges: several FTC violations. Inspector stated that there were three caskets set up in another room other than the selection room that are being offered to the consumer in a packages price that is not listed on the GPL. The manager stated that these caskets have been offered for three months.

FH says it was an oversight on their GPL and they sent in a copy of the new GPL which lists the three caskets on it.

**Recommendation: Consent Order assessing \$1,000 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Buckner to accept Counsel's recommendation

Seconded by Mr. Foster

Adopted by voice vote



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**16. Case No.: L05-FUN-RBS-2005039441**

Complaint is the result of an inspector's notice of violation which alleges: inspector noted several FTC violations. Five outer burial containers were higher on the price list than the price on the unit itself by \$100. GPL high end range for caskets must agree with casket price list. Inspector also noted that the FH corrected the lists on site and he was satisfied with the result.

FH responds that an immediate change was made the same day the citation was given and that it was an honest oversight.

**Recommendation: Consent Order assessing \$250 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Buckner to accept Counsel's recommendation

Seconded by Mr. Murphy

Adopted by voice vote

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**17. Case No.: L05-FUN-RBS-2005039431**

Complaint is the result of an inspector's notice of violation which alleges: No GPL, CPL, or OBCPL were presented at inspection. FD had to go get them from another affiliated FH to be inspected. Statements of services and goods records were not present. They were also kept at other FH. The range on the price list was incorrect. The current license and last inspection report of crematory was not present at time of inspection. They were also at the other FH. One of the current employees license was not available for inspection, this was also at other FH. Inspector also noted that it appeared the FH was being vacated because there was no furniture in the lounge or the office.

FH responds that at the time of inspection they had been reorganizing the facility to ready it for a future closing date; one of the items moved happened to be the filing cabinet which is where the lists in question were located. They did not realize this until the inspection. Also the license of the employee FD was a mistake and they have remedied the situation by creating a tickler file system to ensure that originals and copies of all licenses get posted at all of their location FHs.

**Recommendation: Consent Order assessing \$1,000 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Murphy to accept Counsel's recommendation

Seconded by Mr. Buckner

Adopted by voice vote

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**18. Case No.: L05-FUN-RBS-2005039351**

Complaint is the result of an inspector's notice of violation which alleges: the water in the FH was turned off and the water meter was padlocked. Inspector called the water company and they told him that the water was turned off at the owner's request. The inspector also noticed that the current manager of the FH has not maintained regular hours of supervision for approximately five weeks. There were also soiled linens and waste in the embalming room that have been there for weeks. The inspector also noted that there was an incorrect price on the GPL for graveside services. The list had \$150 but the manager stated that this was actually a cash advance charge for the grave equipment and it was not the correct price.

FH responds that they are trying to sell FH and this has caused many of the problems. There was a mix-up with the water provider which is why there is no water. The FH was trying to get their final water bill and change the account to the new owners name but the water company shut off the water. FH says that the soiled linens and waste were from cleaning out closets and that there were no human fluids involved. Also responds that the GPL was fixed.

**Recommendation: Consent Order assessing \$1,000 civil penalty and authorization for a Formal Hearing.**

A motion was made by Mr. Buckner to accept Counsel's recommendation

Seconded by Mr. Murphy

Adopted by voice vote

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**19. Case No.: L05-FUN-RBS-2005024531**

The Board approved a consent order assessing \$2000 civil penalty against Respondent. Respondent asked if they could make the payment in installments. The new consent order as set out reads as follows:

"Respondent agrees to pay a civil penalty in the amount of two thousand dollars (\$2,000.00). The civil penalty shall be paid in four installments of five hundred dollars (\$500.00) each. The first installment shall be paid upon execution of this Consent Order by the Respondent. Thereafter, the remaining three installments shall be due and payable on March 1, 2006; June 1, 2006; and September 1, 2006. Respondent agrees that upon failure to pay any installment as specified herein, any license held by Respondent shall automatically be revoked and Respondent shall immediately surrender the same to the Commission."

**Recommendation: Agree with the payment plan as set out in consent order.**

A motion was made by Mr. Murphy to accept Counsel's recommendation

Seconded by Mr. Cook

Adopted by voice vote

**STAFF REPORT:**  
**ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR**

**1. Disciplinary Actions:**

The Board has approved the Consent Orders and Civil Penalties, and they have been signed and the civil penalties paid by the establishments. The Executive Director requests the Board's acceptance of the following Consent Orders.

**Complaint No. 2005025031**

**Violation:** Misrepresentation or fraud in the conduct of the business of the funeral establishment – changing the amount of an assignment and receiving excess of the amount contracted and paid for by the decedent's next of kin

**Action:** \$5000 Civil Penalty

**Complaint No. 2005024831**

**Violation:** Immoral or unprofessional conduct and aiding or abetting an unlicensed person to practice within the funeral profession

**Action:** \$2000 Civil Penalty

**Complaint No. 2005019001**

**Violation:** Immoral or unprofessional conduct – incorrect information given to family concerning which chapel for viewing, late in transporting the decedent's body to church, did not respond to board's first notice of complaint, and when responding after second notice, such response failed to address the complaint in a substantive manner.

**Action:** \$2000 Civil Penalty

**Complaint No. 2005024611**

**Violation:** Failed to timely register as a seller of preneed contracts, price discrepancies on price list, failure to present statutorily required price lists to inspector and failure to make available the required licenses of two employees

**Action:** \$500 Civil Penalty

**Complaint No. 2005024901**

**Violation:** Discrepancies on price lists and contracts not itemized

**Action:** \$500 Civil Penalty

**Complaint No. 2005025291**

**Violation:** Failure to provide statutorily required crematory disclosures and price list deficiency

**Action:** \$250 Civil Penalty

**Complaint No. 2005024961**

**Violation:** Failure to make a funeral director's license available for inspection and price list deficiencies

**Action:** \$250 Civil Penalty

A motion was made by Mr. Cook to accept Consent Orders

Seconded by Mr. Murphy

Adopted by voice vote

## **2. Manager Changes**

There have been seven establishments change managers since the last board meeting.

<b>Name of Establishment</b>	<b>Name of New Manager</b>
<b>Atchley's Smokey Mountain Chapel</b>	<b>Adam R. Atchley</b>
<b>Pigeon Forge, TN</b>	
<b>Roesch-Patton-Austin-Bracey-Charlton FH</b>	<b>Gary Michael Morgan</b>
<b>Nashville, TN</b>	
<b>Higgins Funeral Home of Benton, LLC</b>	<b>Billy R. Blackwell</b>
<b>Benton, TN</b>	
<b>Forest Hill FH and Memorial Park – South</b>	<b>Helen M. Ponder</b>
<b>Memphis, TN</b>	
<b>Currie's Funeral Home Alamo</b>	<b>Frank Currie</b>
<b>Alamo, TN</b>	
<b>Mount Olivet Funeral Home</b>	<b>David C.R. McGee, Jr.</b>
<b>Nashville, TN</b>	
<b>Mount Juliet Funeral Home</b>	<b>Ricky D. Chester</b>
<b>Mount Juliet, TN</b>	

### **ELECTION OF BOARD OFFICERS FOR 2006:**

A motion was made by Mr. Buckner to elect Mr. Danny Cook as President.

Seconded by Mr. Foster

Adopted by voice vote

A motion was made by Mr. Foster to elect Mr. Ralph Buckner, Jr. as Vice-President.

Seconded by Mr. Murphy

Adopted by voice vote

A motion was made by Mr. Foster to adjourn.

Seconded by Mr. Murphy

Adopted by voice vote

There being no further business, the meeting adjourned at 11:14 a.m.

Respectfully submitted,

*Robert B. Gribble*

Robert B. Gribble  
Executive Director